

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

BILLEY L. WARDLEY, #71838

PETITIONER

VS.

CIVIL ACTION NO. 3:05-CV-204BN

**LAWRENCE GREER and JIM HOOD,
Attorney General**

RESPONDENTS

OPINION AND ORDER

This cause is before the Court on Petitioner Billy L. Wardley's Objection to the Report and Recommendation of United States Magistrate Judge (hereinafter "Objection"). The Court has considered the Objection and all other relevant pleadings, and finds that the Objection should be denied.

This case arises out of Wardley's conviction and sentence by the Circuit Court of Franklin County, Mississippi, for sale of a controlled substance. After exhausting his state court remedies, Wardley filed a Petition for Writ of Habeas Corpus (hereinafter "Petition") with this Court on March 29, 2005. On July 18, 2005, Respondents filed a Motion to Dismiss Pursuant to § 2244(d). After considering the Motion to Dismiss, Magistrate Judge Alfred G. Nicols rendered a Report and Recommendation (hereinafter "R and R") on October 25, 2005. In the R and R, Judge Nicols found that Wardley's Petition failed to comply with the one year statute of limitation found in 28 U.S.C. § 2244(d). R and R, p. 8. Through

the subject Objection, which was filed with the Clerk of the Court on November 3, 2005, Wardley argues that the conclusions reached by Judge Nicols in the R and R were erroneous. The Objection is now ripe for consideration.

Under Federal Rule of Civil Procedure 72(a), a district judge has the authority to review a magistrate judge's order. Upon the filing of an objection to the magistrate judge's order, the district judge must review the order *de novo*. Koetting v. Thompson, 995 F.2d 37, 40 (5th Cir. 1993) (citation omitted); 28 U.S.C. § 636(b). If the contents of the order are found to be clearly erroneous or contrary to the law, the order may be modified or set aside. Fed. R. Civ. P. 72(a).

After reviewing all relevant data, the Court finds that the conclusions reached by Judge Nicols in the R and R were neither clearly erroneous nor contrary to the law. Therefore, the R and R should be adopted and Petitioner's Objection should be denied. These findings further require the granting of Respondents' Motion to Dismiss.

IT IS THEREFORE ORDERED that the Report and Recommendation of United States Magistrate Judge (docket entry no. 17) is hereby adopted.

IT IS FURTHER ORDERED that Petitioner's Objection to the Report and Recommendation of United States Magistrate Judge (docket entry no. 18) is hereby denied.

IT IS FURTHER ORDERED that Respondents' Motion to Dismiss (docket entry no. 13) is hereby granted.

IT IS FURTHER ORDERED that Petitioner's Motion to Sanction Respondents (docket entry no. 14) is hereby denied.

A Final Judgment will be entered.

SO ORDERED this the 7th day of December, 2005.

s/ William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE

blj